

**MILFORD BOARD OF ADJUSTMENT MINUTS – SEPTEMBER 4, 2003**

**Present:**       **Len Harten, Chairman**  
                  **Rick Westergren, Vice-Chairman**  
                  **Kathleen Maher**  
                  **Katherine Bauer**  
                  **Bob Levenson**

**Shirley Carl, Admn. Asst.**

**Case # 23-03 Gregg Young – 33-35 Putnam St. – Map 26, Lot 171 - Variance –  
Article V, Commercial District, Para. 5.051.P (see 5.034.A) for density.**

**Motion to approve** \_\_\_\_\_

**Seconded by** \_\_\_\_\_

**Signed** \_\_\_\_\_

1 Chairman Harten opened the meeting at 7:30 PM by stating that the hearings are held in  
2 accordance with the TOM Zoning Ordinance and the NH State Statutes.

3  
4 The Notice of hearing and abutter list was read into the record: Present - Gregg Young, owner;  
5 Frank Manley, Cabinet.

6  
7 Mr. Young gave his presentation:

8  
9 1. He has a multi-use dwelling and it has three units on the bottom floor i.e. 2 commercial and a  
10 residential upstairs. The issue tonight is the bottom right-hand unit had been a residential and  
11 changed it to commercial and renting it as commercial since he moved out of the location 10  
12 years ago. Based on the fact that there is an excessive amount of commercial rentals, he wants  
13 to convert it back to residential use.

14  
15 2. The setup of the unit hasn't been changed so it won't be a major conversion. The Building  
16 Inspector has viewed the apartment and informed me what had to be done in order to complete  
17 the conversion.

18  
19 3. The footprint of the building is about 900' on first floor – 26x45'. There was discussion  
20 regarding green space. There is parking at rear of the property i.e. 3 spaces. There is a one  
21 bedroom unit upstairs and also on the first floor. Nothing is really being changed.

22  
23 K. Bauer in an attempt to clarify the situation stated that he has three units, it is staying three  
24 units, but one unit is being converted to commercial and the outside of the building won't  
25 change.

26  
27 Criteria was then addressed by Mr. Young

28  
29 1. Diminishing the value of abutting property - He doesn't believe it will change the value of  
30 abutting property due to the fact that the use is not being upgraded or downgraded.

31 2. Public interest would allow usage of a rental unit, which is in great demand. It is pre-rented if  
32 approved.

33 3. Hardship falls on his side by not being able to functionally rent out the unit. He doesn't think  
34 it would change the ordinance due to the fact that it was originally a residential use.

35 4. Not changing appearance on the exterior.

36 5. Could the variance do substantial justice – no response

37  
38 F. Manley, abutter – no questions

39  
40 The public portion of the meeting was closed at 7:45 pm

41  
42 1. Could the variance be granted without diminishing the value of abutting property?  
43 All members spoke in the affirmative.

44  
45 2. Would granting the variance be of benefit to the public interest?  
46 All members spoke in the affirmative. It isn't against the public interest.

47  
48 4. Would granting the variance do substantial justice?

49 K. Bauer felt it wouldn't do any injustice. B. Levenson commented that because it can't be  
50 rented out as commercial space doesn't mean that it can't be converted to something else, there  
51 is a reasonable use. In a couple of years, if it couldn't be rented out as residential, would it  
52 come back again for commercial use. He feels there is reasonable use. Chairman Harten then  
53 spoke to the ZBA Handbook where it speaks to substantial justice says – any loss to the

1 individual that is not outweighed by a gain to the general public, is an injustice. We are looking  
2 at the reverse in this case. B. Levenson asked the "gain"? K. Maher responded that the gain to  
3 the public is that there is another rental unit. Discussion then turned to demand of residential  
4 versus commercial. R. Westergren and L. Harten didn't have a problem.

5  
6 3a. B. Levenson felt that they have use of the property. There are three units in the building  
7 and two-thirds of the units are being used successfully. This is an issue of density for the reason  
8 that we allow five units per acre – this lot is 2,870 SF. There are more residential units in this  
9 building than are allowed by the ordinance at this time. He then referred to the definition of "lot  
10 use", which says one building or use and this is multi-use. There are no provisions in the  
11 ordinance for multi-use. He doesn't feel there is an unnecessary hardship. K. Bauer felt that  
12 because we have to look at multi-use, which is Res. "B", that allows a certain number of  
13 residential units per acre. We have a building with mixed use, in the middle of Downtown area;  
14 he isn't creating another unit, just changing the use. He isn't even creating another unit, just  
15 switching the use. It is another perfect case for why this Board exists i.e. grant relief from an  
16 unusual case because she feels this is unusual. She then refers to b) – no fair and substantial  
17 relationship exists between the general purposes of the zoning ordinance and the specific  
18 restriction on the property - the density requirement in multi-family – she doesn't feel there is a  
19 fair and substantial relationship when the density rule is applied to this Downtown location that  
20 has three units it at the present time and the number of units is not being changed. Also, it  
21 would not injure the public or private rights of others if he were allowed to change this back into  
22 an apartment. R. Westergren is in agreement. K. Maher doesn't have a problem because we  
23 are here to adjust the zoning laws when they are not applicable to a certain piece of property  
24 and this property is very unique. Also, it isn't an unreasonable use given that he isn't even  
25 making interior changes other than installing smoke alarms. She feels the unnecessary hardship  
26 is that there isn't any ordinance to address buildings that are considered to be in the Oval district.  
27 L. Harten is in agreement. Again, referring back to the ZBA Handbook, it speaks to rather having  
28 to demonstrate that there isn't any reasonable use of the land, the landowners must now  
29 demonstrate that the restriction interferes with their reasonable use of the property considering  
30 its unique setting. He feels we are dealing with a unique setting. It is an existing building, very  
31 congested area, and has three existing units. He thinks there is less impact, both traffic wise and  
32 safety issues having it as a residence as opposed to a commercial space.

33  
34 B. Levenson doesn't see a reasonable use but rather a maximum use. He can't rent it as a  
35 commercial property but he can rent as commercial – he has reasonable use with two out of the  
36 three units rented. No one was in agreement. L. Harten feels it is reasonable. He doesn't think  
37 this would create a public or private nuisance. His answer to the hardship question would be  
38 yes.

39  
40 5. Could the variance without violating the spirit of the ordinance? K. Maher felt the spirit of the  
41 ordinance doesn't address that piece of property. K. Bauer is in agreement; she doesn't see how  
42 it would violate the spirit of the ordinance. R. Westergren feels it is unique and doesn't violate  
43 the spirit of the ordinance. B. Levenson definitely feels it would violate the spirit of the  
44 ordinance. K. Bauer is in agreement with K. Maher, if it is a density issue and not creating  
45 additional units that is different than changing the use of an existing unit. L. Harten was in  
46 agreement with the above affirmative comments.

47  
48 Voting as follows:

49  
50 1. Could the variance be granted without diminishing the value of abutting property?

51 B. Levenson – Yes            R. Westergren – Yes            K. Maher – Yes  
52 K. Bauer – Yes            L. Harten – Yes

1 2. Would granting the appeal be of benefit to the public interest?  
2 B. Levenson – No R. Westergren – Yes K. Maher – Yes  
3 K. Bauer – Yes L. Harten – Yes  
4  
5 3. Unnecessary hardship?  
6 B. Levenson – Yes R. Westergren – Yes K. Maher – Yes  
7 K. Bauer – Yes L. Harten – Yes  
8  
9 4. Would granting the permit do substantial justice?  
10 B. Levenson – Yes R. Westergren – Yes K. Maher – Yes  
11 K. Bauer – Yes L. Harten – Yes  
12  
13 5. Could the variance be granted without violating the spirit of the ordinance?  
14 B. Levenson – Yes R. Westergren – Yes K. Maher – Yes  
15 K. Bauer – Yes L. Harten – Yes  
16  
17  
18 A motion was made by K. Bauer, seconded by R. Westergren to grant the variance by majority  
19 vote - B. Levenson against.  
20  
21 30 day appeal period.